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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

CHARITABLE DAF FUND, L.P., AND CLO  
HOLDCO LTD.

Plaintiff,

VS.

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
HIGHLAND HCF ADVISOR, LTD., AND  
HIGHLAND CLO FUNDING, LTD.

Defendants.

[illegible]

Case No. 3:21-cv-00842-B

**DEFENDANT HIGHLAND CAPITAL MANAGEMENT, L.P.'S  
MOTION TO TAKE JUDICIAL NOTICE OF ORDER**

Highland Capital Management, L.P., a defendant in the above-captioned case (the “Debtor” or “Highland”), submits this motion (the “Motion”) for the Court to take judicial notice

of the *Bankruptcy Court's Memorandum Opinion and Order Holding Certain Parties and Their Attorneys in Civil Contempt of Court for Violation of Bankruptcy Court Orders* [Bankr. Docket No. 2660]<sup>1</sup> (the "Contempt Order"), attached hereto as **Exhibit A**. In support of its Motion, the Debtor respectfully states as follows:

## **I. BACKGROUND**

1. Highland is the debtor and debtor-in-possession in the Bankruptcy Case currently pending in the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court"). The Bankruptcy Case has been pending since October 16, 2019.

2. On April 12, 2021, The Charitable DAF Fund, L.P. (the "DAF") and CLO Holdco, Ltd. ("CLOH" and together with the DAF, "Plaintiffs") filed the *Original Complaint* [Docket No. 1] (the "Complaint") in this Court.

3. On April 19, 2021, Plaintiffs filed their *Motion for Leave to File First Amended Complaint in the District Court* in this Court, seeking leave to add Mr. James P. Seery, Jr., the Debtor's independent, Bankruptcy Court-appointed CEO and CRO, as a defendant [Docket No. 6] (the "Seery Motion"). In response, on April 23, 2021, the Debtor filed its *Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders* [Bankr. Docket No. 2247] (the "Contempt Motion") in the Bankruptcy Court, seeking to hold Plaintiffs in civil contempt of the Bankruptcy Court.

4. On April 29, 2021, the Bankruptcy Court ordered Plaintiffs, among others, to appear at an in person hearing on June 8, 2021, to show cause why they should not be held in contempt [Bankr. Docket No. 2255] (the "Show Cause Order"). A Hearing on the Contempt Motion was held on June 8, 2021 [Bankr. Docket No. 2430].

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<sup>1</sup> Refers to the docket maintained in Case No. 19-34054-sgj11 (the "Bankruptcy Case").

5. On May 19, 2021, Highland filed its *Motion for an Order to Enforce the Order of Reference* [Docket No. 22] (the “Motion to Enforce”). In its Motion to Enforce, Highland set forth the factual background and procedural posture of related proceedings in the Bankruptcy Case, noting that, at that time, the Contempt Motion was pending before the Bankruptcy Court. *See* Motion to Enforce ¶ 30. The Motion to Enforce is pending before the Court.

6. On May 27, 2021, Highland filed its *Motion to Dismiss Complaint* [Docket No. 26] (the “Motion to Dismiss”). The Motion to Dismiss is pending before the Court.

7. On August 4, 2021, the Bankruptcy Court issued its Contempt Order.

## **II. AUTHORITY**

8. “A court may take judicial notice of a fact that is ‘not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.’” *CleanCOALition v. TXU Power*, 536 F.3d 469, 471 n.2 (5th Cir. 2008) (quoting FED. R. EVID. 201(b)).

## **III. RELIEF REQUESTED**

9. Highland requests that the Court take judicial notice of the Contempt Order issued by the Bankruptcy Court, not for the factual or legal basis of such Order, but rather for its existence and to update the Court regarding the procedural posture of the related Bankruptcy proceedings, as discussed in its Motion to Enforce.

## **IV. CONCLUSION**

WHEREFORE, Highland respectfully requests that the Court take judicial notice of the Bankruptcy Court’s Contempt Order.

Dated: August 11, 2021

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/s/ Zachery Z. Annable

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**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that, on August 10, 2021, counsel for the Debtor corresponded with opposing counsel for Plaintiffs regarding whether Plaintiffs were opposed or unopposed to the relief requested in the foregoing Motion. As of the filing of this Motion, counsel for Plaintiffs had not responded to the Debtor's inquiry.

/s/ Zachery Z. Annable  
Zachery Z. Annable